



Pennsylvania Department of Environmental Protection

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Secretary

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Jon M. Capacasa, Director
Water Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

**Re: Clean Water Act Section 401 Certification for
Commercial Vessels and Large Recreational Vessels**

Dear Mr. Capacasa:

This letter is in response to your letter dated October 7, 2008 requesting the Pennsylvania Department of Environmental Protection (Department) grant certification pursuant to Section 401 of the Federal Clean Water Act (CWA), (33 USC §1341) for activities conducted in accordance with the proposed United States Environmental Protection Agency (EPA) General Permit for Commercial Vessels and Large Recreational Vessels (VGP) as described in the June 17, 2008 edition of the Federal Register (73 FR 34296-34304). Subject to the conditions set forth below, the Department finds that the proposed VGP is consistent with Section 401 of the CWA, as well as State water quality standards. Furthermore, the Department finds the proposed VGP to be consistent with the Federal Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq).

This certification shall expire five years after the date of issuance of the EPA's VGP. However, the Department reserves the right to amend, modify or withdraw certification of the VGP in order to protect the waters of the Commonwealth or if for any reason further changes to the draft VGP are made upon issuance of the final VGP. Furthermore, the Department reserves the right to modify this Certification to require vessels covered by the VGP to install and operate ballast water treatment systems to prevent the discharge of aquatic nuisance species to Pennsylvania waters provided a determination is made by the Department that such ballast water treatment systems are necessary, available and cost effective.

The issuance of this Certification does not authorize violation of any federal, state and local laws or regulations, nor does it rule out the necessity of obtaining applicable permits, including any



other Department permits, or approvals from other units of government as may be required by law.

Certification Conditions for the VGP

1. The operator of any vessel covered under the VGP whose voyage originates from within the United States exclusive economic zone and enters Pennsylvania waters with ballast on board, shall conduct ballast water exchange at least 50 nautical miles from shore and in water of at least 200 meters in depth. Such vessels that carry only residual amounts of ballast water and/or sediments shall conduct saltwater flushing of their ballast tanks at least 50 nautical miles from shore and in water of at least 200 meters in depth.

Ballast water exchange is defined as at least one empty and refill cycle of each ballast tank of a vessel that contains ballast water, resulting in a salinity level of at least 30 parts per thousand (ppt). If the master of a vessel determines that such exchange is impracticable, a sufficient number of flow-through exchanges of ballast water may be conducted to achieve replacement of at least 95 percent of ballast water in ballast tanks of the vessel, resulting in a salinity level of at least 30 ppt.

All vessels entering Pennsylvania waters must maintain a salinity level in each tank onboard the vessel of at least 30 ppt.

This condition does not apply to vessels:

- (i) that operate exclusively in the Great Lakes, or
- (ii) operate exclusively within the waters of Pennsylvania, or
- (iii) enter Pennsylvania waters from ports of call on the Delaware River within the States of New Jersey and Delaware, provided that the vessel has met the requirements of this condition prior to entering waters of Pennsylvania, or
- (iv) have met the requirements of Condition No. 2, or
- (v) that carry only permanent ballast water, all of which is in sealed tanks that are not subject to discharge, or
- (vi) of the Armed Forces, or
- (vii) of the National Defense Reserve Fleet.

This condition does not apply to the discharge of ballast water if the master of the vessel reasonably determines that compliance with this condition would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, equipment failure, or any other relevant condition. If the operator of a vessel is unable to conduct ballast water exchange or flushing as specified due to serious safety

concerns as stated above, the operator of any such vessel with ballast on board shall take reasonable measures to avoid discharge of organisms in ballast water and shall inform the Department and EPA in writing of the measures taken.

2. By no later than January 1, 2016, each vessel covered under the VGP that operates in Pennsylvania waters and is constructed prior to January 1, 2012 shall have a ballast water treatment system that meets the following IMO standards, subject to the exceptions listed below.

(A) *Standard for organisms 50 or more micrometers in minimum dimension:* Any ballast water discharged shall contain less than 10 viable organisms per cubic meter.

(B) *Standard for organisms less than 50 micrometers in minimum dimension and 10 or more micrometers in minimum dimension:* Any ballast water discharged shall contain less than 10 viable organisms per milliliter.

(C) *Standards for indicator microbes:*

- (i) Any ballast water discharged shall contain less than 1 colony-forming unit (cfu) of toxicogenic *Vibrio cholera* (serotypes O1 and O139) per 100 milliliters or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;
- (ii) Any ballast water discharged shall contain less than 250 colony-forming units of *Escherichia coli* per 100 milliliters; and
- (iii) Any ballast water discharged shall contain less than 100 colony-forming units of intestinal enterococci per 100 milliliters.

(D) *This condition does not apply to vessels:*

- (i) operating exclusively within waters of Pennsylvania, or
- (ii) that carry only permanent ballast water, all of which is in sealed tanks that are not subject to discharge, or
- (iii) of the Armed Forces, or
- (iv) of the national Defense Reserve Fleet, or
- (v) operating exclusively within Lake Erie.

If compliance with this condition can't be achieved immediately, the permittee may request an extension from the Department and EPA within six months of the issuance of the VGP to comply with this condition. The request shall provide written justification for an extension and shall demonstrate there is a shortage in supply of technology necessary to meet the limits set forth in this certification, or indicate a vessel specific engineering constraint that must be addressed, or demonstrate another factor related to the availability and installation of technology and parts is beyond the vessel owner/operator's control, or provide reasoning for a delay in the technology being available and installed in time to comply with this condition.

3. Each vessel covered under the VGP that operates in Pennsylvania waters and is constructed after January 1, 2012 shall have a ballast water treatment system that meets the following standards, subject to the exceptions listed below.

(A) *Standard for organisms 50 or more micrometers in minimum dimension:* Any ballast water discharged shall contain no detectable living organisms.

(B) *Standard for organisms less than 50 micrometers in minimum dimension and 10 or more micrometers in minimum dimension:* Any ballast water discharged shall contain less than 0.01 viable organisms per milliliter.

(C) *Standards for indicator microbes:*

(i) Any ballast water discharged shall contain less than 1 colony-forming unit (cfu) of toxicogenic *Vibrio cholera* (serotypes O1 and O139) per 100 milliliters or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;

(ii) Any ballast water discharged shall contain less than 126 colony-forming units of *Escherichia coli* per 100 milliliters; and

(iii) Any ballast water discharged shall contain less than 33 colony-forming units of intestinal enterococci per 100 milliliters.

(D) *Standards for bacteria:* Any ballast water discharged shall contain less than 1,000 bacteria per 100 milliliters.

(E) *Standards for viruses:* Any ballast water discharged shall contain less than 10,000 viruses per 100 milliliters.

(F) *This condition does not apply to vessels:*

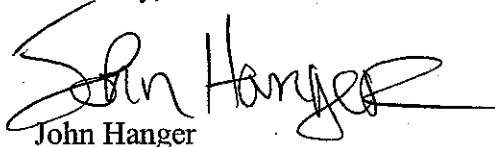
- (i) operating exclusively within waters of Pennsylvania, or
- (ii) that carry only permanent ballast water, all of which is in sealed tanks that are not subject to discharge, or
- (iii) of the Armed Forces, or
- (iv) of the national Defense Reserve Fleet, or
- (v) operating exclusively within Lake Erie.

If compliance with this condition can't be achieved immediately, the permittee may request an extension from the Department and EPA within six months of the issuance of the VGP to comply with this condition. The request shall provide written justification for an extension and shall demonstrate there is a shortage in supply of technology necessary to meet the limits set forth in this certification, or indicate a vessel specific engineering constraint that must be addressed, or demonstrate another factor related to the availability and installation of technology and parts is beyond the vessel owner/operator's control, or provide reasoning for a delay in the technology being available and installed in time to comply with this condition.

4. The permittee may not discharge floating materials, oil, grease, scum, foam, sheen and substances which produce color, taste, turbidity or settle to form deposits in concentrations or amounts sufficient to be, or creating a danger of being, inimical to the water uses to be protected or to human, animal, plant or aquatic life.

The conditions set forth in this certification letter are necessary to ensure compliance with the requirements of the Pennsylvania Clean Streams Law (35 P.S. §§ 691.1 – 691.1011) as well as to reduce water degradation, unintentional discharge of invasive species, nutrient loading, disease organisms and other pollutants discharged from vessels covered by the VGP that have the potential to disrupt the ecological balance of Pennsylvania's waters and the Great Lakes and negatively impact the fish and wildlife resources of this Commonwealth.

Sincerely,


John Hanger
Acting Secretary